

103D CONGRESS
1ST SESSION

S. 343

To amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980 to provide relief to local taxpayers, municipalities, and small businesses regarding the cleanup of hazardous substances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. LAUTENBERG (for himself, Mrs. BOXER, Mr. DODD, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LIEBERMAN, Mr. SARBANES, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980 to provide relief to local taxpayers, municipalities, and small businesses regarding the cleanup of hazardous substances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Toxic Cleanup Equity
5 and Acceleration Act of 1993”.

1 **SEC. 2. MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.**

2 (a) DEFINITIONS.—Section 101 of the Comprehen-
3 sive Environmental Response, Compensation, and Liabil-
4 ity Act of 1980 (42 U.S.C. 9601) is amended by adding
5 the following new paragraphs at the end thereof:

6 “(39) The term ‘municipal solid waste’ means
7 all waste materials generated by households, includ-
8 ing single and multiple residences, and hotels and
9 motels. The term also includes trash generated by
10 commercial, institutional, and industrial sources (a)
11 when such materials are essentially the same as
12 waste normally generated by households, or (b) when
13 such waste materials were collected and disposed of
14 with other municipal solid waste or sewage sludge
15 and, regardless of when generated, would be consid-
16 ered conditionally exempt small quantity generator
17 waste under section 3001(d) of the Solid Waste Dis-
18 posal Act. Examples of municipal solid waste include
19 food and yard waste, paper, clothing, appliances,
20 consumer product packaging, disposable diapers, of-
21 fice supplies, cosmetics, glass and metal food con-
22 tainers, school science laboratory waste, and house-
23 hold hazardous waste (such as painting, cleaning,
24 gardening, and automotive supplies). The term ‘mu-
25 nicipal solid waste’ does not include combustion ash
26 generated by resource recovery facilities or municipal

1 incinerators, or waste from manufacturing or proc-
2 essing (including pollution control) operations not
3 essentially the same as waste normally generated by
4 households.

5 “(40) The term ‘sewage sludge’ refers to any
6 solid, semisolid, or liquid residue removed during the
7 treatment of municipal waste water, domestic sew-
8 age, or other waste waters at or by a publicly owned
9 treatment works.

10 “(41) The term ‘municipality’ means any politi-
11 cal subdivision of a State and may include cities,
12 counties, villages, towns, townships, boroughs, par-
13 ishes, schools, school districts, sanitation districts,
14 water districts, and other local governmental enti-
15 ties. The term also includes any natural person act-
16 ing in his or her official capacity as an official, em-
17 ployee, or agent of a municipality.”.

18 (b) Section 113 of the Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980 is
20 amended by adding the following new subsections at the
21 end thereof:

22 “(m) CONTRIBUTION ACTIONS FOR MUNICIPAL
23 SOLID WASTE AND SEWAGE SLUDGE.—No municipality
24 or other person shall be liable to any person other than
25 the President for claims of contribution under this section

1 or for other response costs, penalties, or damages under
2 this Act for the generation, transportation, or arrange-
3 ment for the transportation, treatment, or disposal of mu-
4 nicipal solid waste or sewage sludge.

5 “(n) PUBLIC RIGHT-OF-WAY.—In no event shall a
6 municipality incur liability under this Act for the acts of
7 owning or maintaining a public right-of-way over which
8 hazardous substances are transported, or of granting a
9 business license to a private party for the transportation,
10 treatment, or disposal of municipal solid waste or sewage
11 sludge. For the purposes of this subsection, ‘public right-
12 of-way’ includes, but is not limited to, roads, streets, flood
13 control channels, or other public transportation routes,
14 and pipelines used as a conduit for sewage or other liquid
15 or semiliquid discharges.”.

16 (c) Section 122 of the Comprehensive Environmental
17 Response, Compensation, and Liability Act of 1980 is
18 amended by adding the following new subsection at the
19 end thereof:

20 “(n) SETTLEMENTS FOR GENERATORS AND TRANS-
21 PORTERS OF MUNICIPAL SOLID WASTE OR SEWAGE
22 SLUDGE.—

23 “(1) ELIGIBLE PERSONS.—The term ‘eligible
24 person’ under this subsection means any person
25 against whom an administrative or judicial action is

1 brought, or to whom notice is given of potential li-
2 ability under this Act, for the generation, transpor-
3 tation, or arrangement for the transportation, treat-
4 ment, or disposal of municipal solid waste or sewage
5 sludge. An eligible person who may be liable under
6 section 107(a)(1) or 107(a)(2) of this Act or for
7 substances other than municipal solid waste or sew-
8 age sludge is covered by the Toxic Cleanup Equity
9 and Acceleration Act of 1993 and the amendments
10 to this Act made by the Toxic Cleanup Equity and
11 Acceleration Act of 1993 to the extent that the per-
12 son is liable for the generation, transportation, or
13 arrangement for the transportation, treatment, or
14 disposal of municipal solid waste or sewage sludge.

15 “(2) NEGOTIATION OF SETTLEMENTS; MORATO-
16 RIUM.—Eligible persons under this subsection may
17 offer to settle their potential liability with the Presi-
18 dent by stating in writing their ability and willing-
19 ness to settle their potential liability in accordance
20 with this subsection. Upon receipt of such offer to
21 settle, neither the President nor any other person
22 shall take further administrative or judicial action
23 against the eligible person, unless the President de-
24 termines that the eligible person’s offer or position
25 during negotiations is not in good faith or otherwise

1 not in accordance with this subsection or that the
2 matters addressed include liability not related to the
3 generation, transportation, or arrangement for the
4 transportation, treatment, or disposal of municipal
5 solid waste or sewage sludge. Nothing in this sub-
6 section shall limit or modify the President's author-
7 ity under section 104(e) (42 U.S.C. 9604(e)).

8 “(3) TIMING.—Eligible persons may tender of-
9 fers under this subsection within one hundred and
10 eighty days after receiving a notice of potential li-
11 ability or becoming subject to administrative or judi-
12 cial action, or within one hundred and eighty days
13 after a record of decision is issued for the portion
14 of the response action that is the subject of the per-
15 son's settlement offer, whichever is later. If the
16 President notifies an eligible person that he or she
17 may be a potentially responsible party, no further
18 administrative or judicial action may be taken by
19 any party for one hundred and twenty days against
20 such person.

21 “(4) EXPEDITED FINAL SETTLEMENT.—The
22 President shall make a good faith effort to reach
23 final settlements as promptly as possible under this
24 subsection and such settlements shall—

1 “(A) allocate to all generation, transpor-
2 tation, or arrangement for the transportation,
3 treatment, or disposal of municipal solid waste
4 or sewage sludge a combined total of no more
5 than 4 percent of the total response costs for
6 the facility; *Provided, however,* That the Presi-
7 dent shall reduce this percentage when the
8 presence of municipal solid waste and sewage
9 sludge is not significant at the facility;

10 “(B) require an eligible person under this
11 subsection to pay only for his or her equitable
12 share of the maximum 4 percent portion of re-
13 sponse costs described in subparagraph (A);

14 “(C) limit an eligible person’s payments
15 based on such person’s inability to pay,
16 litigative risks, public interest considerations,
17 precedential value, and equitable factors;

18 “(D) permit an eligible person to provide
19 in-kind services with regard to the response ac-
20 tion in lieu of cash contributions and to be
21 credited at market rates for such services;

22 “(E) limit a publicly owned treatment
23 works’ payments if it has promoted the bene-
24 ficial reuse of sewage sludge through land appli-
25 cation when the basis of liability arises from

1 sewage sludge generated thirty-six months after
2 the date of enactment of this subsection or
3 thereafter; and

4 “(F) be reached even in the event that an
5 eligible person may be liable under sections
6 107(a)(1) or 107(a)(2) of this Act or for sub-
7 stances other than municipal solid waste or
8 sewage sludge.

9 “(5) COVENANT NOT TO SUE.—The President
10 may provide a covenant not to sue with respect to
11 the facility concerned to any person who has entered
12 into a settlement under this subsection unless such
13 a covenant would be inconsistent with the public in-
14 terest as determined under subsection (f) of this sec-
15 tion.

16 “(6) EFFECT OF AGREEMENT.—A person that
17 has resolved his or her liability to the United States
18 under this subsection shall not be liable for claims
19 of contribution or for other response costs, penalties,
20 or damages under this Act regarding matters ad-
21 dressed in the settlement. Such settlement does not
22 discharge any of the other potentially responsible
23 parties unless its terms so provide, but it reduces
24 the potential liability of the others by the amount of
25 the settlement.

1 “(7) DE MINIMIS SETTLEMENTS.—Nothing in
2 this subsection shall alter or diminish a person’s
3 ability to reach a settlement with the President
4 under subsection (g) of this section.

5 “(o) FUTURE DISPOSAL PRACTICES.—This sub-
6 section applies only to the generation, transportation, or
7 arrangement for the transportation, treatment, or disposal
8 of municipal solid waste or sewage sludge occurring thirty-
9 six months after the date of enactment of this subsection.
10 Beginning at such time and with regard to such future
11 municipal solid waste or sewage sludge, eligible persons
12 who are municipalities or operators of publicly owned
13 treatment works may assert the provisions of section
14 122(n) only under the following circumstances:

15 “(1) if liability arises from municipal solid
16 waste collected and disposed of thirty-six months or
17 later after the date of enactment of this subsection
18 and the eligible person is a municipality, a qualified
19 household hazardous waste collection program must
20 have been operating while the municipal solid waste
21 was collected and disposed; or

22 “(2) if liability arises from sewage sludge gen-
23 erated thirty-six months or later after the date of
24 enactment of this subsection and the eligible person
25 is an owner or operator of a publicly owned treat-

1 ment works, a qualified publicly owned treatment
2 works must have been operating while the sewage
3 sludge was generated at such treatment works.

4 “(3) The term ‘qualified household hazardous
5 waste collection program’ means a program that in-
6 cludes—

7 “(A) at least semiannual, well-publicized
8 collections at conveniently located collection
9 points with an intended goal of participation by
10 10 percent of community households;

11 “(B) a public education program that iden-
12 tifies both hazardous household products and
13 safer substitutes (source reduction);

14 “(C) efforts to collect hazardous waste
15 from conditionally exempt small quantity gen-
16 erators under section 3001(d) of the Solid
17 Waste Disposal Act, with an intended goal of
18 collecting wastes from 20 percent of such gen-
19 erators doing business within the jurisdiction of
20 the municipality; and

21 “(D) a comprehensive plan, which may in-
22 clude regional compacts or joint ventures, that
23 outlines how the program will be accomplished.

24 “(4) A person that operates a ‘qualified house-
25 hold hazardous waste collection program’ and col-

1 lects hazardous waste from conditionally exempt
2 small quantity generators under section 3001(d) of
3 the Solid Waste Disposal Act must transport or ar-
4 range to transport such waste in accordance with
5 the Solid Waste Disposal Act and must dispose of
6 such waste at a hazardous waste treatment, storage
7 or disposal facility with a permit under section 3005
8 of the Solid Waste Disposal Act (42 U.S.C. 6925),
9 but such person is otherwise deemed to be handling
10 only household waste under the Solid Waste Dis-
11 posal Act when it operates a qualified household
12 hazardous waste collection program.

13 “(5) Nothing in this Act is intended to prohibit
14 a municipality from assessing fees to persons whose
15 waste is accepted during household hazardous waste
16 collections, or shall prohibit a municipality from re-
17 fusing to accept waste that the municipality believes
18 is being disposed of in violation of the Solid Waste
19 Disposal Act.

20 “(6) The term ‘qualified publicly owned treat-
21 ment works’ means a publicly owned treatment
22 works that complies with section 405 of the Federal
23 Water Pollution Control Act (33 U.S.C. 1345).

24 “(7) The President may determine that a
25 household hazardous waste collection program or a

1 publicly owned treatment works is not qualified
2 under this subsection. Minor instances of noncompli-
3 ance do not render a household hazardous waste col-
4 lection program or publicly owned treatment works
5 unqualified under this subsection.

6 “(8) If the President determines that a house-
7 hold hazardous waste collection program is not
8 qualified, the provisions of section 122(n) shall not
9 apply, but only with regard to the municipal solid
10 waste disposed of during the period of disqualifica-
11 tion.

12 “(9) If a municipality or operator of a publicly
13 owned treatment works is notified by the President
14 or by a State with a program approved under sec-
15 tion 402(b) of the Federal Water Pollution Control
16 Act (33 U.S.C. 1342(b)) that its publicly owned
17 treatment works is not in compliance with the re-
18 quirements for paragraph (6) of this subsection, and
19 if such noncompliance is not remedied within twelve
20 months, the provisions of section 122(n) shall not
21 apply, but only with regard to the sewage sludge
22 generated or disposed of during the period of non-
23 compliance.”.

24 (d) Section 122(g)(1)(A)(i) of the Comprehensive En-
25 vironmental Response, Compensation, and Liability Act of

1 1980 is amended by inserting the following sentence at
2 the end solid waste and sewage sludge, not the overall
3 quantity of municipal solid waste and sewage sludge.”.

4 (e) Nothing in this section shall modify the meaning
5 or interpretation of the Solid Waste Disposal Act.

6 (f) Nothing in this section shall modify a State’s abil-
7 ity under the Comprehensive Environmental Response,
8 Compensation, and Liability Act of 1980 to carry out ac-
9 tions authorized in such Act and to enter into a contract
10 or cooperative agreement with the President to carry out
11 such actions.

12 (g) The settlement procedures and bar on judicial
13 and administrative proceedings addressed in this section
14 shall apply even if any constituent component of municipal
15 solid waste or sewage sludge may be considered a hazard-
16 ous substance under the Comprehensive Environmental
17 Response, Compensation, and Liability Act of 1980 when
18 the constituent component exists apart from municipal
19 solid waste or sewage sludge.

20 (h) This Act and the amendments made by this sec-
21 tion shall apply to each municipality and other person
22 against whom administrative or judicial action has been
23 commenced before the effective date of this Act, unless
24 a final court judgment has been rendered against such
25 municipality or other person or final court approval of a

1 settlement agreement including such municipality or other
2 person as a party has been granted. If a final court judg-
3 ment has been rendered or court-approved settlement
4 agreement has been reached that does not resolve all con-
5 tested issues, such amendments shall apply to all con-
6 tested issues not expressly resolved by such court judg-
7 ment or settlement agreement.

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